Nor-Cal Ready Mix, Inc. d/b/a Antioch Rock & Ready Mix *and* Machinists District Lodge 190, Local 1173, International Association of Machinists and Aerospace Workers, AFL–CIO and Operating Engineers Local Union No. 3, International Union of Operating Engineers, AFL–CIO. Case 32–CA–17406

June 28, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

Pursuant to a charge filed on April 29, 1999, the General Counsel of the National Labor Relations Board issued a complaint on May 12, 1999, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish information following the Union's certification in Cases 32–RC–4443 and 32–RC–4448.[1] (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer with affirmative defenses admitting in part and denying in part the allegations in the complaint.

On June 1, 1999, the General Counsel filed a Motion for Summary Judgment. On June 2, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On June 8, 1999, the Union filed a Joinder in Motion for Summary Judgment. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to recognize and bargain and to furnish information, but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.[2] The Respondent affirmatively states that it is "conducting a technical refusal to bargain in order to obtain judicial review of the election and post-election proceedings in Cases 32–RC–4443 and 32–RC–4448."

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no issues warranting a hearing with respect to the Union's request for information. The Respondent admits that by letter dated April 28, 1999, the Union requested that the Respondent furnish it with the following information:

> (1) A list of current employees including their names, dates of hire, rates of pay, job classification, last known address, phone number, and date of completion of any probationary period.
>
> (2) A copy of all current personnel policies, practices or procedures.
>
> (3) A statement and description of all company personnel policies, practices or procedures other than those mentioned in Number 2 above.
>
> (4) A copy of all company fringe benefit plans including pension, profit sharing, severance, stock incentive, vacation, health and welfare, apprenticeship, training, legal services, child care or any other plans which relate to employees.
>
> (5) Copies of all current job descriptions.
>
> (6) Copies of any company wage or salary plans.
>
> (7) Copies of all disciplinary notices, warnings or records of disciplinary personnel actions for the last year.
>
> (8) A statement and description of all wage and salary plans which are not provided under number 6 above.

The Respondent's answer admits that it refused to provide this information and, by reason of its denial that the Union is the valid exclusive collective-bargaining representative, denies that the information requested is relevant and necessary for the Union's role as the exclusive bargaining representative of the unit employees. It is well established, however, that such information is presumptively relevant and must be furnished on request unless its relevance is rebutted, which the Respondent has not done. See, e.g., *Maple View Manor, Inc.*, 320 NLRB 1149 (1996); *Trustees of the Masonic Hall*, 261 NLRB 436, 437 (1982); and *Verona Dyestuff Division*, 233 NLRB 109, 110 (1977).

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to recognize and bargain with the Union and to furnish it the requested information.

On the entire record, the Board makes the following

[1] The order transferring proceeding to the Board and Notice to Show Cause inadvertently omitted reference to Case 32–RC–4448. The record clearly establishes that this case is included in this proceeding.

[2] 327 NLRB No. 187 (1999).

FINDINGS OF FACT

I. JURISDICTION

At all times material, the Respondent, a California corporation, has been engaged in the production and sale of concrete[3] and ready-mix materials at its Antioch, California facility.

During the 12-month period preceding issuance of the complaint, the Respondent, in the course and conduct of its business operations, purchased and received goods valued in excess of $50,000 directly from suppliers located outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Machinists District Lodge 190, Local Lodge 1173, International Association of Machinists and Aerospace Workers, AFL–CIO (Machinists) and Operating Engineers Local Union No. 3, International Union of Operating Engineers, AFL–CIO (Operating Engineers) were joint petitioners in the underlying representation case and are collectively called the Union. The Machinists and the Operating Engineers, the Union, are each now, and have been at all times material, labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held June 11, 1998, the Union was certified on April 22, 1999, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time mechanics, lubrication employees, parts runner, equipment operators, and batch plant operators employed by Respondent at its Antioch and Byron, California facilities (also included are any Antioch or Byron bargaining unit employees assigned to Respondent's Rio Vista, California facility); excluding all drivers, sales employees, office clerical employees, managerial and administrative employees, all other employees, guards, and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

On or about April 27, 1999, the Respondent, by letter, informed the Union that it intended to conduct a "technical refusal to bargain" in order to obtain judicial review of the representation proceeding. On or about April 28, 1999, the Union, by letter, requested that the Respondent recognize and bargain with it and that the Respondent furnish certain information. Since on or about April 27, 1999, the Respondent has refused to recognize and bargain with the Union, and since on or about April 28, 1999, the Respondent has refused to provide the information. We find that these refusals constitute unlawful refusals to recognize and bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing on and after April 27 and 28, 1999, respectively to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to recognize and bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co*., 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co*., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Nor-Cal Ready Mix, Inc. d/b/a Antioch Rock & Ready Mix, Antioch, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with Machinists District Lodge 190, Local 1173, International Association of Machinists and Aerospace Workers, AFL–CIO and Operating Engineers Local Union No. 3, International Union of Operating Engineers, AFL–CIO (the Union) as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

[3] In its answer to the complaint, the Respondent advised that the word "concrete" should be substituted for the word "cement" as set forth in the complaint.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time mechanics, lubrication employees, parts runner, equipment operators, and batch plant operators employed by Respondent at its Antioch and Byron, California facilities (also included are any Antioch or Byron bargaining unit employees assigned to Respondent's Rio Vista, California facility); excluding all drivers, sales employees, office clerical employees, managerial and administrative employees, all other employees, guards, and supervisors as defined in the Act.

(b) Furnish the Union the information that it requested on April 28, 1999.

(c) Within 14 days after service by the Region, post at its facilities in Antioch, Byron, and Rio Vista, California, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 32 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 27, 1999.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 28, 1999

Sarah M. Fox, Member

Wilma B. Liebman, Member

J. Robert Brame III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to recognize bargain with Machinists District Lodge 190, Local 1173, International Association of Machinists and Aerospace Workers, AFL–CIO and Operating Engineers Local Union No. 3, International Union of Operating Engineers, AFL–CIO, the Union, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, recognize and bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All full-time and regular part-time mechanics, lubrication employees, parts runner, equipment operators, and batch plant operators employed by us at our Antioch and Byron, California facilities (also included are any Antioch or Byron bargaining unit employees assigned to our Rio Vista, California facility); excluding all drivers, sales employees, office clerical employees, managerial and administrative employees, all other employees, guards, and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on April 28, 1999.

NOR-CAL READY MIX, INC. D/B/A ANTIOCH ROCK & READY MIX

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."